

## **Item SPR05-39 Response Form**

**Title:** Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators (adopt Cal. Rules of Court, rules 7.1010 and 7.1060)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

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Judicial Council, 455 Golden Gate Avenue,  
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**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-39)

Title	Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators (adopt Cal. Rules of Court, rules 7.1010 and 7.1060)
Summary	The proposed new rules would establish minimum education and prior-experience qualifications for private professional guardians and conservators appointed by the courts after January 1, 2006, and provide and define continuing education requirements for these professionals beginning in 2007.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Committee Counsel, 415-865-7535, douglas.miller@jud.ca.gov
Discussion	<p>Private professional guardians and conservators<sup>1</sup> must file annual information statements with the courts that appoint them and must register with the Department of Justice every three years.<sup>2</sup> The information and registration statements require disclosure of professional fiduciaries' educational background and experience. But there are currently no minimum educational or experience qualifications to enter the private fiduciary profession, and no statewide requirements for their continuing education.<sup>3</sup></p> <p>Legislation passed in 2004 directs the Judicial Council to prescribe by rule effective January 1, 2006, the qualifications necessary for private professional guardians and conservators, and the yearly number of hours and subject matter of continuing education classes related to the duties of a guardian or conservator that private professionals will be</p>

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<sup>1</sup> A private professional guardian or conservator is a person who has been appointed as guardian or conservator of two or more persons unrelated to him or her at the same time. (See Prob. Code, § 2341.)

<sup>2</sup> Prob. Code, §§ 2340–2344 (information statements) and 2850–2855 (registration with the Department of Justice). Copies of these provisions as amended effective January 1, 2005 are attached to this Invitation to Comment.

<sup>3</sup> San Francisco Superior Court recently adopted a local rule requiring prior experience or completion of a course leading to a certificate in fiduciary management as conditions to the appointment of a private professional conservator in San Francisco, and imposing continuing education requirements on professional conservators after appointment. See Super. Ct., San Francisco County, Local Rules, rule 14.105B2a and b.

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required to complete.<sup>4</sup> In response to the statutory directive, the Probate and Mental Health Advisory Committee consulted with representatives of the organizations identified in the statute<sup>5</sup> in the development of these rules.

Two rules are proposed: one for private professional guardians, the other for private professional conservators. The latter rule is discussed first because the advisory committee believes that there are many more private professional conservators than guardians.

### *Proposed rule 7.1060*

Proposed rule 7.1060 would be added to chapter 22 of title 7 of the rules, Conservatorships. The proposed rule would:

1. Define a private professional conservator subject to the rule by reference to the definition provided in Probate Code section 2341(a) (rule 7.1060(a)(6)).
2. Prescribe initial or foundational education and experience qualifications for private professional conservators effective January 1, 2006 (rule 7.1060(b)). There are four tracks of initial education and prior experience, at least one of which must be satisfied. The tracks are:
  - a. A four-year college degree (any field) and two years of relevant prior employment experience or experience as an appointed guardian or conservator (rule 7.1060(b)(2)(A));
  - b. A two-year college degree in specified fields and five years of relevant prior employment or appointment experience (rule 7.1060(b)(2)(B));
  - c. Current active or inactive licensure in California in specified professions (rule 7.1060(b)(2)(C)); or
  - d. Retired judge, justice, or commissioner of a California

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<sup>4</sup> Stats. 2004, ch. 625 (Assem. Bill 1155), § 1. A copy of the uncodified portion of this legislation is attached to this Invitation to Comment.

<sup>5</sup> See Assem. Bill 1155, § 1(b)(1). Representatives of the California Bar Association, the National Association of Professional Geriatric Care Managers, the National Guardianship Association, and the Professional Fiduciary Association of California participated in the development of these proposed rules. The advisory committee is grateful to these representatives and their organizations for their very generous expenditure of time and effort, and their effective assistance.

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court (rule 7.1060(b)(2)(D));

The Probate and Mental Health Advisory Committee requests comments concerning whether the list of licensed professionals who would be qualified to be appointed as a private professional conservator under rule 7.1060(b)(2)(C) or as a private professional guardian under rule 7.1010(b)(2)(C) should be modified by addition or subtraction.

The advisory committee proposes to limit the eligibility of retired judicial officers under rules 7.1060(b)(2)(D) and 7.1010(b)(2)(D) to persons who held full time judicial positions. Referees are not mentioned in these provisions because many referees, particularly those appointed in civil and probate matters, are appointed on a case-by-case or other temporary basis and maintain private practices in law or other professions. But many, if not most, juvenile court referees are full-time judicial officers. Former judicial officers with substantial juvenile court experience might well be very appropriate as professional fiduciaries, particularly as guardians. The advisory committee requests comments concerning an expansion of this eligibility category to include retired full-time juvenile court referees or other full-time judicial officers.

3. Require a private professional conservator to satisfy either of the following qualifications, in addition to qualifying on one of the four tracks mentioned above (rule 7.1060(b)(3)):
  - a. Have been appointed as a private professional guardian or conservator in California in 10 matters in the 5 years preceding January 1, 2006 (rule 7.1060(b)(3)(A)); or
  - b. Successfully complete a program of education approved by the Administrative Office of the Courts leading to a certificate in professional fiduciary management (rule 7.1060(b)(3)(B));
4. Bar from appointment as a private professional conservator any person:
  - a. Convicted of any felony, or any misdemeanor involving abuse or neglect of a child or an elderly or dependent adult;
  - b. Determined to be liable in a civil action or proceeding for conversion, embezzlement, fraud, misappropriation,

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misrepresentation, or theft; or

- c. Removed as a fiduciary by a court for actions involving breach of fiduciary duty, conversion, fraud, misappropriation, misrepresentation, or theft (rule 7.1060(b)(4)).
5. Permit courts in smaller counties with five or fewer private professional guardians or conservators with at least one active matter pending in that court to appoint a private professional conservator who does not meet the initial education and experience requirements of rule 7.1060(b)(2) and (3), on conditions satisfactory to the court, if the court determines that the appointment is necessary (rule 7.1060(c)).
6. Provide transitional provisions affecting qualifications of professional conservators during 2006 (rule 7.1060(d)) (see discussion below).
7. Require a minimum of 15 hours of continuing education for private professional conservators every calendar year, commencing on January 1, 2007 (rule 7.1060(e)(1)). A private professional who is both a guardian and a conservator could satisfy the requirements under the guardianship and the conservatorship rules by completing a total of 15 hours for both rules.
8. Require a minimum of one hour each year of continuing education on fiduciary ethics, and five hours each on subjects appropriate for conservators of the person and conservators of the estate. The five-hour minimums would apply to all professional conservators subject to the rule, without regard to whether they are appointed in both capacities in any conservatorship (rule 7.1060(e)(2)).
9. Establish nonexclusive lists of subjects for continuing education appropriate for conservators of the person and conservators of the estate (rule 7.1060(e)(3) [person] and (4) [estate]).
10. Establish a list of initial authorized providers of continuing education in calendar 2007, and provide for approval of all such providers by the Administrative Office of the Courts after 2007 (rule 7.1060(f)).
11. Establish means for private professional conservators to prove that they satisfy initial qualifications and have complied with the annual continuing education requirements (rule 7.1060(h)).

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12. Require courts to report a private professional conservator's failure to meet initial qualifications or comply with continuing education requirements to the Statewide Registry under Probate Code section 2850(d) (rule 7.1060(h)(3)).
13. Authorize courts to waive the continuing education requirements on ground of hardship (rule 7.1060(i)).

### *Transitional provisions*

The transitional provisions in rule 7.1060(d) would be as follows:

1. Conservators that meet the 10-in-5 standard (10 appointments in 5 years before January 1, 2006, rule 7.1060(b)(3)(A)) but who did not qualify under one of the four tracks for prior education or experience described above (rule 7.1060(b)(2)(A)–(D)) would be eligible to complete their existing appointments and accept new ones after January 1, 2006 if they complete the certificate program in fiduciary management under rule 7.1060(b)(3)(B) before January 1, 2007.
2. The court would have discretion to appoint in 2006, on conditions satisfactory to the court, a conservator who satisfies one of the four tracks for prior education or experience but does not meet the 10-in-5-standard on January 1 of that year if he or she completes the certificate program in fiduciary management by the end of 2006.
3. The court would have discretion to permit a conservator appointed before January 1, 2006 to continue as conservator after that date (but not to be appointed on new matters) on conditions set by the court, although he or she does not on that date satisfy one of the four tracks for prior education or experience and the 10-in -5 standard described above. The conservator could thereafter apply for removal of the conditions, and become eligible for new appointments, when he or she qualifies on one of the four prior education or experience tracks and completes the certificate program in fiduciary management.

### *Proposed rule 7.1010*

The rule concerning private professional guardians, proposed rule 7.1010, would be added to chapter 21 of title 7 of the rules, Guardianships. Rule 7.1010 would exactly parallel the provisions of the conservatorship rule, except that the lists of subjects for continuing education programs in paragraphs (e)(3) and (4), particularly those for

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guardians of the person in (e)(3), are specifically tailored for guardianships for minors rather than conservatorships for adults; and the entire rule is inapplicable to private professional guardians appointed as guardians of the person only. See rule 7.1010(j), an express exemption from the entire rule for such guardians, and rule 7.1010(b), which makes the qualification requirements expressly applicable only to private professional guardians of the estate or the person and estate.

Copies of proposed rules 7.1010 and 7.1060 are attached at pages 7–29.

A copy of the Legislative Counsel’s Digest and section 1 (uncodified) of AB 1155 is attached at pages 30–32.

Copies of Probate Code sections 2340–2344 and 2850–2855, as amended effective January 1, 2005, are attached at pages 33–43.

Attachments

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Rules 7.1010 and 7.1060 of the California Rules of Court would be adopted, effective January 1, 2006, to read:

### Chapter 21 Guardianships

\* \* \*

#### **Rule 7.1010. Qualifications and continuing education requirements for private professional guardians**

**(a) [Definitions]** For purposes of this rule:

- (1) An “accredited educational institution” is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.
- (2) The term “developmental disability” has the meaning specified in Probate Code section 1420.
- (3) Unless the context otherwise requires, the term “guardian” refers to a guardian of the person, a guardian of the estate, or both, appointed by a court in a guardianship proceeding under Division 4 of the Probate Code (commencing with section 1400).
- (4) A “Lanterman-Petris-Short conservatorship” is a conservatorship of a person who is gravely disabled as the result of a mental disorder or impairment by chronic alcoholism under Welfare and Institutions Code section 5350, et seq.
- (5) The term “private professional guardian” has the meaning specified in Probate Code section 2341(b), including a guardian of one unrelated minor whom an appointing court has required to comply with Article 4 of Chapter 4 of Part 4 of Division 4 of that code (commencing with section 2340).
- (6) An “unrelated minor” is a person under the age of majority who is not related to a private professional guardian by blood, marriage, or domestic partnership.



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1 (b) **[Qualifications for appointment]** Except as otherwise provided in this rule,  
2 effective January 1, 2006, a court may not appoint a private professional  
3 guardian as guardian of the estate or guardian of the person and estate of an  
4 unrelated minor unless the private professional guardian satisfies the following  
5 qualifications on the date of the order of appointment:

6  
7 (1) Is at least 21 years of age;

8  
9 (2) Satisfies one or more of the following subparagraphs:

10  
11 (A) Has a four-year undergraduate degree or equivalent from an  
12 accredited educational institution; and

13  
14 (i) Two or more years' employment experience in a position with  
15 responsibility for the care or management of the persons or  
16 estates of children or dependent, developmentally disabled, or  
17 mentally ill adults, or supervision of those caring for or  
18 assisting them, (1) in a nonprofit corporation or public agency  
19 of the federal government or any state, city, or county; (2) in a  
20 bank or corporation authorized under the law of any state to  
21 engage in the business of a trust company; or (3) in a nonprofit  
22 corporation or with a professional fiduciary or organization of  
23 professional fiduciaries acting as a court-appointed fiduciary  
24 under the law of any state; or

25  
26 (ii) Two or more years' experience as a court-appointed, qualified,  
27 and acting guardian or conservator of the person or estate of a  
28 minor or an adult under the law of any state;

29  
30 (B) Has a two-year undergraduate degree or equivalent in a behavioral  
31 science, business, nursing, or accounting from an accredited  
32 educational institution; and

33  
34 (i) Five or more years' employment experience in a position and  
35 with an entity or individual described in (A)(i); or

36  
37 (ii) Five or more years' experience as a court-appointed, qualified,  
38 and acting guardian or conservator of the person or estate of a  
39 minor or an adult under the law of any state;

40  
41 (C) Has a current active license in good standing, or an inactive license  
42 that was current, active and in good standing and was not revoked,

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or resigned or surrendered with proceedings for revocation pending, within five years of the later of the effective date of this rule or the date of appointment as a private professional guardian, to practice one of the following professions in the State of California:

- (i) Attorney at law;
- (ii) Certified public accountant;
- (iii) Educational psychologist;
- (iv) Licensed clinical social worker;
- (v) Marriage and family therapist;
- (vi) Pharmacist;
- (vii) Physician or surgeon;
- (viii) Psychologist; or
- (ix) Registered nurse.

or

- (D) Is a retired judge or commissioner of a California trial court, or a retired justice of a California appellate court.

(3) Has either:

- (A) Been appointed, qualified, and acted as guardian of the estate, or the person and estate, or conservator of the person, estate, or both, of 10 or more persons in the State of California in the five-year period next preceding January 1, 2006; or
- (B) Successfully completed a program of education approved by the Administrative Office of the Courts and received a certificate or its equivalent in professional fiduciary management for guardians or conservators;

and

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1       (4) Has not:

2  
3           (A) Been convicted of any felony, or a misdemeanor involving abuse or  
4               neglect of a child or an elderly or dependent adult;

5  
6           (B) Been determined to be liable in a civil action or proceeding for  
7               conversion, embezzlement, fraud, misappropriation,  
8               misrepresentation, or theft; or

9  
10          (C) Been removed as a fiduciary by a court for actions involving breach  
11               of fiduciary duty, conversion, fraud, misappropriation,  
12               misrepresentation, or theft.

13  
14       **(c) [Discretionary exception for small counties]**

15  
16       (1) Notwithstanding any other provision of this rule, a court in a county that  
17           has five or fewer private professional guardians or conservators, as  
18           determined under (2), who have been appointed as a private professional  
19           fiduciary in at least one guardianship or conservatorship matter that is  
20           then open and active in that court may, in the exercise of the court's  
21           discretion, appoint a private professional guardian who does not meet any  
22           of the requirements of (b)(2) and (3) on conditions satisfactory to the  
23           court, if the court determines that it is necessary to appoint a private  
24           professional guardian in a particular case;

25  
26       (2) The court must determine the number of private professional guardians or  
27           conservators active in its county at the time of the proposed discretionary  
28           appointment authorized under (1) by checking the latest annual  
29           information statements required by Probate Code section 2342 on file  
30           with the court as of the date of the proposed appointment, and reviewing  
31           the guardianship or conservatorship matters listed in the statements to  
32           confirm their status as open and active on that date.

33  
34       **(d) [Transitional provisions for qualifications]**

35  
36       (1) (Eligibility of experienced guardians)

37  
38           (A) Notwithstanding any other provision of this rule, the court may  
39               appoint as guardian of the estate, or the person and estate, of an  
40               unrelated minor, a private professional guardian who does not  
41               satisfy the education, licensure, or judicial-background requirements  
42               of (b)(2)(A), (B), (C), or (D) on the date of appointment if he or she

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1 satisfied the experience requirements of (b)(3)(A) on January 1,  
2 2006.

3  
4 (B) A private professional guardian appointed under (A) in 2006 must  
5 complete the education requirement of (b)(3)(B) and provide a  
6 certificate or other proof of completion satisfactory to the court  
7 before January 1, 2007. The court must remove a private  
8 professional guardian who fails to do so.

9  
10 (C) A private professional guardian appointed under (A) after 2006 must  
11 complete the education requirement of (b)(3)(B) and provide a  
12 certificate or other proof of completion satisfactory to the court at  
13 the time of appointment.

### 14 15 (2) (Completion of educational requirements in 2006)

16  
17 (A) During 2006, the court may, in the exercise of its discretion, appoint  
18 as guardian of the estate, or the person and estate, of an unrelated  
19 minor, a private professional guardian who does not satisfy the prior  
20 experience or education requirements of (b)(3) on the date of  
21 appointment.

22  
23 (B) A private professional guardian appointed under (A) must complete  
24 the education requirements of (b)(3)(B) and provide a certificate or  
25 other proof of completion satisfactory to the court before January 1,  
26 2007.

27  
28 (C) The court must remove a private professional guardian appointed  
29 under (A) who fails to timely comply with (B).

### 30 31 (3) (Guardianships pending on January 1, 2006)

32  
33 (A) The court may, in the exercise of its discretion, permit a private  
34 professional guardian who was appointed and qualified as a  
35 guardian of the estate, or the person and estate, of an unrelated  
36 minor before January 1, 2006, to continue as guardian after that date  
37 on conditions approved by the court, although the guardian does not  
38 on that date satisfy the qualifications specified in (b)(2)(A), (B), (C),  
39 or (D) and the experience requirement specified in (b)(3)(A).

40  
41 (B) A private professional guardian permitted by the court to continue as  
42 guardian under (A) may apply to the court for removal of any

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conditions imposed by the court at any time after January 1, 2006 that he or she becomes qualified under (b)(2)(A), (B), or (C) and satisfies the education requirement of (b)(3)(B).

### (e) [Continuing education]

(1) (Annual time requirements) Beginning on January 1, 2007, except as provided in (i) and (j), every private professional guardian must complete a minimum of 15 hours of continuing education each calendar year from eligible providers under this rule.

(A) A maximum of 4 of the hours required by this paragraph may be by self-study under the supervision of an eligible continuing education provider that provides evidence of completion.

(B) A private professional guardian may complete continuing education courses that satisfy the requirements of this subdivision offered by eligible continuing education providers by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(C) A private professional guardian who serves as an instructor in a continuing education course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction.

(2) (Annual subject matter requirements)

(A) At least 5 hours of continuing education each year must be in subjects appropriate for a guardian of the person.

(B) At least 5 hours of continuing education each year must be in subjects appropriate for a guardian of the estate.

(C) At least 1 hour of continuing education each year must be in fiduciary ethics.

(3) (Subject matter for guardians of the person) “Subjects appropriate for a guardian of the person” under (2) include the following:

(A) Assessment of child abuse issues;

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- (B) Child custody and visitation issues in guardianships;
  - (C) Community resources;
  - (D) Developmental disabilities;
  - (E) Interfamilial relationships and conflict resolution, with emphases on parent-child relationships, and blended and extended families;
  - (F) Interstate issues in guardianships of the person of minors;
  - (G) Involuntary mental health evaluation and additional treatment for mentally ill children;
  - (H) Lanterman-Petris-Short conservatorships;
  - (I) Mandatory reporting requirements for child abuse;
  - (J) Medical decision making by guardians;
  - (K) Minors' rights to mental health treatment or counseling services;
  - (L) Probate Code and other California legal requirements for guardianships of the person;
  - (M) Psychological and developmental needs of children;
  - (N) Recognizing and evaluating mental illnesses in children; and
  - (O) Significance of culture and religion in the lives of children.
- (4) (Subject matter for guardians of the estate) "Subjects appropriate for a guardian of the estate" under (2) include the following:
- (A) Asset recovery;
  - (B) Court accounting;
  - (C) Economics of fiduciary services;
  - (D) Enforcing a child's right to support;

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- 1           (E) Evaluation of investment securities;
- 2
- 3           (F) Fiduciary liability;
- 4
- 5           (G) Fiduciary office management and technology;
- 6
- 7           (H) Income taxation;
- 8
- 9           (I) Interstate issues in guardianships of the estate of minor children;
- 10
- 11           (J) Investment and other advisors for fiduciaries;
- 12
- 13           (K) Liability insurance;
- 14
- 15           (L) Litigation by and against guardians;
- 16
- 17           (M) Medi-Cal, Supplemental Security Income, and other public benefits;
- 18
- 19           (N) Medical insurance;
- 20
- 21           (O) Personal property asset management;
- 22
- 23           (P) Probate Code and other California legal requirements for probate
- 24               guardianships of the estate;
- 25
- 26           (Q) Prudent Investor Act and authorized investments by guardians;
- 27
- 28           (R) Real property asset management;
- 29
- 30           (S) Record keeping;
- 31
- 32           (T) Risk management;
- 33
- 34           (U) Settlement of the claim or disposition of the proceeds of a judgment
- 35               for a minor;
- 36
- 37           (V) Special needs trusts; and
- 38
- 39           (W) Any subject not listed in this paragraph that is identified as
- 40               appropriate for a conservator of the estate in rule 7.1060(d)(4).
- 41

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(5) (Continuing education for dual-status private professional fiduciaries)  
Notwithstanding any other provision of this rule and rule 7.1060, a private professional guardian under this rule who is also a private professional conservator under rule 7.1060 may satisfy the minimum hours requirements of both rules by completing a total of at least 15 hours of continuing education annually from eligible providers under either rule.

**(f) [Approved eligible continuing education providers]**

(1) Eligible continuing education providers may include accredited education institutions, professional associations, professional continuing-education groups, public or private for-profit or not-for-profit groups, or court-connected groups.

(2) Effective January 1, 2008, continuing education providers and courses must be approved by the Administrative Office of the Courts.

(3) Continuing education completed in calendar 2007 complies with the requirements of this rule if it addresses the subjects required by this rule, is certified for continuing education credit by the provider in accordance with the requirements of subdivision (g), and is provided by:

(A) An accredited educational institution;

(B) An accountancy organization or private education provider, if the education qualifies with the California State Board of Accountancy for continuing education credit for renewal of an individual license as a Certified Public Accountant;

(C) The Administrative Office of the Courts;

(D) The American Bar Association;

(E) California Continuing Education of the Bar;

(F) A local bar association or private education provider, if the education qualifies with the California State Bar for continuing legal education credit for a member of the California bar;

(G) The National Association of Social Workers;



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(H) The National Guardianship Association; or

(I) The Professional Fiduciary Association of California.

(g) **[Requirements for continuing education providers]** Each continuing education provider must:

(1) Ensure that the instructors teaching continuing education courses are qualified to teach the subject matter of the courses they teach;

(2) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;

(3) Keep records of attendance or self-study and distribute a certificate of completion to each participant. The certificate must document the subject taught, the number of hours of education offered, the number of hours the participant completed, and the name of the education provider; and

(4) Be approved under (f)(2).

(h) **[Proof of compliance]**

(1) (Qualifications) Every private professional guardian must demonstrate his or her qualifications under (b) under penalty of perjury in his or her information statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after the effective date of this rule and annually thereafter.

(2) (Continuing education)

(A) Every private professional guardian must declare under penalty of perjury that he or she has complied with the continuing education requirements for the previous calendar year under (e) in his or her annual statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after December 31, 2007, and annually thereafter.

(B) Every private professional guardian must retain certificates of attendance or other proof of participation in continuing education required by this rule for a period of three years after the end of each year of education completed. An appointing court may require a private professional guardian to produce proof of compliance with

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1                    the requirement for any year at any time within that period, in a  
2                    manner determined by the appointing court.

3  
4            (3) *(Report of noncompliance to the Statewide Registry)* If an appointing  
5            court determines that a private professional guardian has failed to comply  
6            with the qualification or continuing education requirements of this rule,  
7            the court clerk must forward a copy of the court's determination to the  
8            Statewide Registry under Probate Code section 2850(d).

9  
10           (i) **[Waiver of continuing education]** Notwithstanding any other provision of  
11           this rule, a court may, on ground of hardship, waive the continuing education  
12           requirements of (e), in whole or in part and under conditions satisfactory to the  
13           court, for any private professional guardian appointed by the court.

14  
15           (i) **[Exemption of guardians of the person only]** Notwithstanding any other  
16           provision of this rule, a private professional guardian of the person only of two  
17           or more unrelated minors is exempt from the requirements of this rule.  
18

**Chapter 22 Conservatorships**

\* \* \*

**Rule 7.1060. Qualifications and continuing education requirements for private professional conservators**

**(a) [Definitions]** For purposes of this rule:

- (1) An “accredited educational institution” is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation.
- (2) Unless the context otherwise requires, the term “conservator” refers to a conservator of the person, a conservator of the estate, or both, appointed by a court in a conservatorship proceeding under Division 4 of the Probate Code (commencing with section 1400).
- (3) The term “developmental disability” has the meaning specified in Probate Code section 1420.
- (4) A “Lanterman-Petris-Short conservatorship” is a conservatorship of a person who is gravely disabled as the result of a mental disorder or impairment by chronic alcoholism under Welfare and Institutions Code section 5350, et seq.
- (5) A “limited conservatorship” is a conservatorship of a developmentally disabled adult the court finds lacks the capacity to perform some, but not all, of the tasks necessary to provide for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources.
- (6) The term “private professional conservator” has the meaning specified in Probate Code section 2341(a), including a conservator of one unrelated person whom an appointing court has required to comply with Article 4 of Chapter 4 of Part 4 of Division 4 of that code (commencing with section 2340).
- (7) An “unrelated person” is a person who is not related to a private professional conservator by blood, marriage, or domestic partnership.

**(b) [Qualifications for appointment]** Except as otherwise provided in this rule, effective January 1, 2006, a court may not appoint a private professional

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conservator as conservator of an unrelated person unless the private professional conservator satisfies the following qualifications on the date of the order of appointment:

(1) Is at least 21 years of age;

(2) Satisfies one or more of the following subparagraphs:

(A) Has a four-year undergraduate degree or equivalent from an accredited educational institution; and

(i) Two or more years' employment experience in a position with responsibility for the care or management of the persons or estates of children or dependent, developmentally disabled, or mentally ill adults, or supervision of those caring for or assisting them, (1) in a nonprofit corporation or public agency of the federal government or any state, city, or county; (2) in a bank or corporation authorized under the law of any state to engage in the business of a trust company; or (3) in a nonprofit corporation or with a professional fiduciary or organization of professional fiduciaries acting as a court-appointed fiduciary under the law of any state; or

(ii) Two or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state;

(B) Has a two-year undergraduate degree or equivalent in a behavioral science, business, nursing, or accounting from an accredited educational institution; and

(i) Five or more years' employment experience in a position and with an entity or individual described in (A)(i); or

(ii) Five or more years' experience as a court-appointed, qualified, and acting guardian or conservator of the person or estate of a minor or an adult under the law of any state;

(C) Has a current active license in good standing, or an inactive license that was current, active and in good standing and was not revoked, or resigned or surrendered with proceedings for revocation pending, within five years of the later of the effective date of this rule or the

### Invitation to Comment (SPR05-39)

date of appointment as a private professional conservator, to practice one of the following professions in the State of California:

- (i) Attorney at law;
- (ii) Certified public accountant;
- (iii) Educational psychologist;
- (iv) Licensed clinical social worker;
- (v) Marriage and family therapist;
- (vi) Pharmacist;
- (vii) Physician or surgeon;
- (viii) Psychologist; or
- (ix) Registered nurse.

or

- (D) Is a retired judge or commissioner of a California trial court, or a retired justice of a California appellate court.

(3) Has either:

- (A) Been appointed, qualified, and acted as guardian of the estate, or the person and estate, or conservator of the person, estate, or both, of ten (10) or more persons in the State of California in the five-year period next preceding January 1, 2006; or
- (B) Successfully completed a program of education approved by the Administrative Office of the Courts and received a certificate or its equivalent in professional fiduciary management for guardians or conservators;

and

(4) Has not:

## Invitation to Comment (SPR05-39)

1           (A) Been convicted of any felony, or a misdemeanor involving abuse or  
2           neglect of a child or an elderly or dependent adult;

3  
4           (B) Been determined to be liable in a civil action or proceeding for  
5           conversion, elder or dependent adult abuse or neglect,  
6           embezzlement, fraud, misappropriation, misrepresentation, or theft;  
7           or

8  
9           (C) Been removed as a fiduciary by a court for actions involving breach  
10           of fiduciary duty, conversion, fraud, misappropriation,  
11           misrepresentation, or theft.

### 12 13       (c) **[Discretionary exception for small counties]**

14  
15       (1) Notwithstanding any other provision of this rule, a court in a county that  
16       has five or fewer private professional guardians or conservators, as  
17       determined under (2), who have been appointed as a private professional  
18       fiduciary in at least one guardianship or conservatorship matter that is  
19       then open and active in that court may, in the exercise of the court's  
20       discretion, appoint a private professional conservator who does not meet  
21       any of the requirements of (b)(2) and (3) on conditions satisfactory to the  
22       court, if the court determines that it is necessary to appoint a private  
23       professional conservator in a particular case;

24  
25       (2) The court must determine the number of private professional guardians or  
26       conservators active in its county at the time of the proposed discretionary  
27       appointment authorized under (1) by checking the latest annual  
28       information statements required by Probate Code section 2342 on file  
29       with the court as of the date of the proposed appointment, and reviewing  
30       the guardianship or conservatorship matters listed in the statements to  
31       confirm their status as open and active on that date.

### 32 33       (d) **[Transitional provisions for qualifications]**

34  
35       (1) *(Eligibility of experienced conservators)*

36  
37       (A) Notwithstanding any other provision of this rule, the court may  
38       appoint as conservator of the estate, or the person and estate, of an  
39       unrelated person, a private professional conservator who does not  
40       satisfy the education, licensure, or judicial-background requirements  
41       of (b)(2)(A), (B), (C), or (D) on the date of appointment if he or she

## Invitation to Comment (SPR05-39)

1 satisfied the experience requirements of (b)(3)(A) on January 1,  
2 2006.

3  
4 (B) A private professional conservator appointed under (A) in 2006  
5 must complete the education requirement of (b)(3)(B) and provide a  
6 certificate or other proof of completion satisfactory to the court  
7 before January 1, 2007. The court must remove a private  
8 professional conservator who fails to do so.

9  
10 (C) A private professional conservator appointed under (A) after 2006  
11 must complete the education requirement of subparagraph (b)(3)(B)  
12 of this rule and provide a certificate or other proof of completion  
13 satisfactory to the court at the time of appointment.

### 14 15 (2) (Completion of educational requirements in 2006)

16  
17 (A) During 2006, the court may, in the exercise of its discretion, appoint  
18 as conservator of an unrelated person, a private professional  
19 conservator who does not satisfy the prior experience or education  
20 requirements of paragraph (b)(3) of this rule on the date of  
21 appointment.

22  
23 (B) A private professional conservator appointed under (A) must  
24 complete the education requirements of subparagraph (b)(3)(B) and  
25 provide a certificate or other proof of completion satisfactory to the  
26 court before January 1, 2007.

27  
28 (C) The court must remove a private professional conservator appointed  
29 under (A) who fails to timely comply with (B).

### 30 31 (3) (Conservatorships pending on January 1, 2006)

32  
33 (A) The court may, in the exercise of its discretion, permit a private  
34 professional conservator who was appointed and qualified as a  
35 conservator of an unrelated person before January 1, 2006, to  
36 continue as conservator after that date on conditions approved by  
37 the court, although the conservator is not on that date qualified  
38 under subparagraph (b)(2)(A), (B), (C), or (D) and satisfies the  
39 education requirement of subparagraph (b)(3)(B).

40  
41 (B) A private professional conservator permitted by the court to  
42 continue as conservator under (A) may apply to the court for

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removal of any conditions imposed by the court at any time after January 1, 2006, that he or she becomes qualified under (b)(2)(A), (B), or (C) and satisfies the education requirement of (b)(3)(B).

### (e) [Continuing education]

(1) (Annual time requirements) Beginning on January 1, 2007, except as provided in (i), every private professional conservator must complete a minimum of 15 hours of continuing education each calendar year from eligible providers under this rule.

(A) A maximum of 4 of the hours required by this paragraph may be by self-study under the supervision of an eligible continuing education provider that provides evidence of completion.

(B) A private professional conservator may complete continuing education courses that satisfy the requirements of this subdivision offered by eligible continuing education providers by means of video presentations or other delivery means at remote locations. Such courses are not self-study within the meaning of this rule.

(C) A private professional conservator who serves as an instructor in a continuing education course that satisfies the requirements of this rule may receive 1.5 hours of course participation credit for each hour of course instruction.

(2) (Annual subject matter requirements)

(A) At least 5 hours of continuing education each year must be in subjects appropriate for a conservator of the person.

(B) At least 5 hours of continuing education each year must be in subjects appropriate for a conservator of the estate.

(C) At least 1 hour of continuing education each year must be in fiduciary ethics.

(3) (Subject matter for conservators of the person) “Subjects appropriate for a conservator of the person” under (2) include the following:

(A) Advance directives and end-of-life decisions;



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- 1            (B) Assessment of living situations;
- 2
- 3            (C) Communicating with adults with diminished capacity;
- 4
- 5            (D) Community resources;
- 6
- 7            (E) Dementia assessment;
- 8
- 9            (F) Dementia powers;
- 10
- 11           (G) Developmental disabilities;
- 12
- 13           (H) Due Process in Competency Determinations Act;
- 14
- 15           (I) Elder and dependent adult abuse or neglect and legal remedies;
- 16
- 17           (J) Evaluation of residential care facilities;
- 18
- 19           (K) Family dynamics and conflict resolution;
- 20
- 21           (L) Home care of adults with diminished capacity;
- 22
- 23           (M) Interstate issues in conservatorships of the person;
- 24
- 25           (N) Involuntary mental health evaluation and intensive treatment for
- 26           gravely disabled adults;
- 27
- 28           (O) Lanterman-Petris-Short conservatorships;
- 29
- 30           (P) Limited conservatorships of the person of developmentally disabled
- 31           persons;
- 32
- 33           (Q) Mandatory reporting requirements for elder and dependent adult
- 34           abuse;
- 35
- 36           (R) Medical decision making by conservators;
- 37
- 38           (S) Medications for adults with diminished capacity;
- 39
- 40           (T) Physical and cognitive functional assessments;
- 41

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1           (U) Probate Code and other California legal requirements for probate  
2           conservatorships of the person;

3  
4           (V) Reading and understanding medical charts;

5  
6           (W) Recognizing and evaluating mental illnesses;

7  
8           (X) Regulation of residential care facilities;

9  
10          (Y) Rights of residents and patients in residential, board and care, group  
11          living, and long-term care facilities; and

12  
13          (Z) Working with other professionals.

14  
15          (4) *(Subject matter for conservators of the estate)* “Subjects appropriate for a  
16          conservator of the estate” under (2) include the following:

17  
18          (A) Asset recovery;

19  
20          (B) Court accounting;

21  
22          (C) Economics of fiduciary services;

23  
24          (D) Elder and dependent adult financial abuse and legal remedies;

25  
26          (E) Evaluation of investment securities;

27  
28          (F) Fiduciary liability;

29  
30          (G) Fiduciary office management and technology;

31  
32          (H) Income taxation;

33  
34          (I) Interstate issues in conservatorships of the estate;

35  
36          (J) Investment and other advisors for fiduciaries;

37  
38          (K) Liability insurance;

39  
40          (L) Limited conservatorships of the estate of developmentally disabled  
41          adults;  
42

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1           (M) Litigation by and against conservators;

2  
3           (N) Marital and domestic partnership property issues in  
4               conservatorships;

5  
6           (O) Medi-Cal, Supplemental Security Income, and other public benefits;

7  
8           (P) Medicare and medical insurance;

9  
10          (Q) Personal property asset management;

11  
12          (R) Powers of attorney, abuses and remedies;

13  
14          (S) Probate Code and other California legal requirements for probate  
15               conservatorships of the estate;

16  
17          (T) Prudent Investor Act and authorized investments by conservators;

18  
19          (U) Real property asset management;

20  
21          (V) Record keeping;

22  
23          (W) Risk management;

24  
25          (X) Special needs trusts; and

26  
27          (Y) Substituted judgment.

28  
29          (5) (Continuing education for dual-status private professional fiduciaries)  
30               Notwithstanding any other provision of this rule and rule 7.1010, a  
31               private professional conservator under this rule who is also a private  
32               professional guardian under rule 7.1010 may satisfy the minimum hours  
33               requirements of both rules by completing a total of at least 15 hours of  
34               continuing education annually from eligible providers under either rule.

### 35 36       (f) **[Approved eligible continuing education providers]**

37  
38          (1) Eligible continuing education providers may include accredited  
39               educational institutions, professional associations, professional  
40               continuing-education groups, public or private for-profit or not-for-profit  
41               groups, or court-connected groups.

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- 1           (2) Effective January 1, 2008, continuing education providers and courses  
2           must be approved by the Administrative Office of the Courts.  
3
- 4           (3) Continuing education completed in calendar 2007 complies with the  
5           requirements of this rule if it addresses the subjects required by this rule,  
6           is certified for continuing education credit by the provider in accordance  
7           with the requirements of subdivision (g), and is provided by:  
8
- 9                (A) An accredited educational institution;  
10
- 11               (B) An accountancy organization or private education provider, if the  
12               education qualifies with the California State Board of Accountancy  
13               for continuing education credit for renewal of an individual license  
14               as a Certified Public Accountant;  
15
- 16               (C) The Administrative Office of the Courts;  
17
- 18               (D) The American Bar Association;  
19
- 20               (E) The American Society of Aging;  
21
- 22               (F) California Continuing Education of the Bar;  
23
- 24               (G) The Gerontological Society of America;  
25
- 26               (H) A local bar association or private education provider, if the  
27               education qualifies with the California State Bar for continuing legal  
28               education credit for a member of the California bar;  
29
- 30               (I) The National Association of Professional Geriatric Care Managers;  
31
- 32               (J) The National Association of Social Workers;  
33
- 34               (K) The National Guardianship Association; or  
35
- 36               (L) The Professional Fiduciary Association of California.  
37
- 38       (g) **[Requirements for continuing education providers]** Each continuing  
39       education provider must:  
40
- 41               (1) Ensure that the instructors teaching continuing education courses are  
42               experts in the subject matter;

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(2) Monitor and evaluate the quality of courses, curricula, instructors, and instructor training;

(3) Keep records of attendance or self-study and distribute a certificate of completion to each participant. The certificate must document the subject taught, the number of hours of education offered, the number of hours the participant completed, the name of the instructor, and the name of the education provider; and

(4) Be approved under (f)(2).

### **(h) [Proof of compliance]**

(1) (Qualifications) Every private professional conservator must demonstrate his or her qualifications under (b) under penalty of perjury in his or her information statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after the effective date of this rule and annually thereafter.

(2) (Continuing education)

(A) Every private professional conservator must declare under penalty of perjury that he or she has complied with the continuing education requirements for the previous calendar year under (e) in his or her annual statement filed with the clerk of each appointing court under Probate Code section 2342, beginning with the first statement filed after December 31, 2007, and annually thereafter.

(B) Every private professional conservator must retain certificates of attendance or other proof of participation in continuing education required by this rule for a period of three years after the end of each year of education completed. An appointing court may require a private professional conservator to produce proof of compliance with the requirement for any year at any time within that period, in a manner determined by the appointing court.

(3) (Report of noncompliance to the Statewide Registry) If an appointing court determines that a private professional conservator has failed to comply with the qualification or continuing education requirements of this rule, the court clerk must forward a copy of the court's determination to the Statewide Registry under Probate Code section 2850(d).

## Invitation to Comment (SPR05-39)

- 1  
2     **(i) [Waiver of continuing education]** Notwithstanding any other provision of  
3     this rule, a court may, on ground of hardship, waive the continuing education  
4     requirements of (e), in whole or in part and under conditions satisfactory to the  
5     court, for any private professional conservator appointed by the court.

# **Legislative Counsel's Digest and Section 1 of AB 1155**

## **CHAPTER 625**

**FILED WITH SECRETARY OF STATE SEPTEMBER 21, 2004**

**APPROVED BY GOVERNOR SEPTEMBER 21, 2004**

**INTRODUCED BY Assembly Member Liu**

An act to amend Sections 2342.5 and 2850 of, and to add Section 2344 to, the Probate Code, relating to conservators and guardians.

### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1155, Liu. Conservators and guardians: educational requirements. Existing law defines private professional conservators and private professional guardians and requires them to file specified information with the courts and to provide a specified declaration to a statewide registry. Existing law permits a person authorized by nonprofit, private entities to perform conservatorship functions to satisfy certain filing requirements a specified way. Existing law prohibits a court from appointing these guardians and conservators unless they are registered. A guardian or conservator who signs a declaration, as described above, that asserts the truth of any material matter which he or she knows to be false is guilty of a misdemeanor. Existing law establishes the Judicial Council and requires it to adopt rules relating to the administration of courts.

This bill would require the Judicial Council, on or before January 1, 2006, to adopt a rule of court that specifies the qualifications of private professional conservators and guardians, including certain educational requirements. The bill would require the Judicial Council to consult with specified parties in formulating the rule, and would permit the Judicial Council to include provisions waiving the requirements in cases of undue hardship. The bill would require private professional conservators and private professional guardians, other than persons who are appointed as a guardian of the person, as specified, to comply with these Judicial Council requirements, and would prohibit these guardians and conservators from registering with the Statewide Registry if they fail to fulfill these educational requirements. The bill would specify that a private professional conservator authorized by a nonprofit, private entity to perform conservatorship functions, as described above, is required to fulfill the educational requirements established by the Judicial Council for these conservators.

By changing the definition of a crime, this bill would create a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate additional changes in Section 2850 of the Probate Code proposed by SB 1248 that would become operative only if SB 1248 and this bill are both chaptered and become effective on or before January 1, 2005.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

- (a) On or before January 1, 2006, the Judicial Council shall adopt a rule of court that shall do all of the following:
  - (1) Specifies the qualifications of a private professional conservator or private professional guardian.
  - (2) Specifies the number of hours of education in classes related to the duties of the conservator or guardian that a private professional conservator or private professional guardian must complete each year.
  - (3) Specifies the particular subject matter that may be included in the education required each year.
  - (4) Requires a private professional conservator or private professional guardian to certify to the court the completion of the yearly specified hours of education.
- (b) In formulating the rule required by this section:
  - (1) The Judicial Council shall consult with interested parties, including, but not limited to, the Professional Fiduciary Association of California, the California Bar Association, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.



(2) The Judicial Council may include provisions that allow courts to waive the educational requirements in individual cases when compliance would constitute an undue hardship.

(c) In formulating the rule described by this section, the Judicial Council is not required to include provisions regarding the qualifications or educational requirements of an individual who is appointed by the court pursuant to Section 1514 as a guardian of the person only.

## **PROBATE CODE SECTIONS 2340-2344**

**(Effective January 1, 2005)**

2340.

- (a) No superior court may appoint a private professional conservator or private professional guardian, or permit any person to continue to serve as a private professional conservator or private professional guardian, pursuant to Chapter 5 (commencing with Section 2350) or Chapter 6 (commencing with Section 2400) unless the conservator or guardian has filed the information required by Sections 2342 and 2343 with the clerk of the court in each county where a petition for appointment has been filed.
- (b) No superior court may appoint a private professional trustee unless the trustee has filed the information required by Sections 2342 and 2343 with the clerk of the court in each county where a petition for appointment has been filed.

2341.

- (a) As used in this article, "private professional conservator" means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require any person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a "private professional conservator" includes those persons.
- (b) As used in this article, "private professional guardian" means a person or entity appointed as guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a guardian shall comply with this article. The court may, at its discretion, require any

person who is the guardian for only one ward not related to the guardian by blood or marriage to comply with this article, and in that case, references in this article to a "private professional guardian" includes those persons.

As used in this article, "private professional guardian" does not include a nonrelated guardian of the person of a minor appointed by the court, where the appointment results from the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed by the court pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

- (c) As used in this article, "private professional trustee" means a nonprofit charitable corporation appointed as trustee pursuant to Section 15604.

2342.

- (a) All private professional conservators, private professional guardians, and private professional trustees shall file annually with the clerk of the court a statement, under penalty of perjury, containing the following information:
  - (1) His or her educational background and professional experience.
  - (2) At least three professional references.
  - (3) The names of the conservator's or guardian's current conservatees or the trusts currently administered by the trustee.
  - (4) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.
  - (5) The conservator's, guardian's, or trustee's addresses and telephone numbers for his or her place of business and place of residence.
  - (6) Whether the conservator, guardian, or trustee has ever been removed for cause as conservator or guardian or trustee or has resigned as conservator or guardian or trustee in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers.

- (7) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust cases which are closed for which the private professional conservator, private professional guardian, or private professional trustee served as the conservator, guardian, or trustee.
- (b) Upon filing of a petition for appointment, a private professional conservator, private professional guardian, and private professional trustee shall state that he or she is a private professional conservator or private professional guardian or private professional trustee, and that the information required by this section is on file with the clerk of the court.
- (c) The clerk of the court shall order a background fingerprint check from the Department of Justice and may request a background fingerprint check from the Federal Bureau of Investigation on each private professional conservator, private professional guardian, or private professional trustee. The background check shall include a record of all arrests resulting in conviction and all arrests for which final disposition is pending. The Department of Justice shall retain these fingerprints in its files and shall provide any subsequent arrest information to the clerk of the court pursuant to Section 11105.2 of the Penal Code until notified by the clerk of the court that the person is no longer serving in the capacity of a private professional conservator, private professional guardian, or private professional trustee. The superior court shall review the background fingerprint check prior to the appointment of a private professional conservator, private professional guardian, or private professional trustee. The court shall review annual updates to the criminal background check on persons currently serving in the capacity of a private professional conservator, private professional guardian, or private professional trustee under the court's jurisdiction. The background fingerprint check may be dispensed with by the court if the petitioner was appointed as a private professional conservator, private professional guardian, or private professional trustee, or served in the capacity of a private professional conservator, private professional guardian, or private professional trustee, during the previous year and a background fingerprint check was previously made.
- (d) The information required by this section shall be made available to the court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the conservator or guardian or trustee, but shall otherwise be kept confidential.

- (e) This section applies to all private professional conservators, private professional guardians, and private professional trustees regardless of the date of appointment.

2342.5.

- (a) Notwithstanding Section 2342, all natural persons who are authorized by a private entity, which is exempt from federal income taxation pursuant to Section 501(C)(3) of the Internal Revenue Code or is exempt from state taxes pursuant to Sections 23701 and 23701d of the Revenue and Taxation Code, to perform the functions of a conservator may elect to annually file a statement required by subdivision (a) of Section 2342 only with the clerk of the court of the county in which the private entity has its principal place of business if all of the following requirements are met:

- (1) The private entity provides conservatorship services to 10 or more conservatees with assets of less than twenty thousand dollars (\$20,000) each.
- (2) At least 40 percent of the total number of conservatees served by the private entity in the state have assets of less than twenty thousand dollars (\$20,000) each.
- (3) The total annual fees received by the private entity for providing conservatorship services do not exceed 5 percent of the total assets of all the conservatees served by the private entity.

Only the clerk of the court and superior court of the county in which this statement is filed shall be required to comply with the background check requirements of Section 2342 for this statement.

- (b) Upon filing of a petition for appointment, a private professional conservator described in subdivision (a) shall state that he or she is a private professional conservator and the name of the county in which the information required by Section 2342 is on file.
- (c) A private professional conservator described in subdivision (a) shall meet the educational requirements generally established by the Judicial Council for private professional conservators.

2343.

The clerk of the court shall charge each private professional conservator or private professional guardian an annual filing fee which does not exceed the average per-conservator or per-guardian annual cost in complying with this article. This fee shall also include the cost of submitting the fingerprint card to the Department of Justice.

2344.

- (a) A private professional conservator or a private professional guardian shall meet the requirements for education and experience established by the Judicial Council prior to appointment as conservator or guardian.
- (b) A private professional conservator or private professional guardian that fails to fulfill the educational requirements established by the Judicial Council for appointment as a private professional conservator or a private professional guardian may not register with the Statewide Registry.
- (c) This section does not apply to an individual who is appointed by the court pursuant to Section 1514 as a guardian of the person only.

## **PROBATE CODE Sections 2850–2855**

**(Effective January 1, 2005)**

2850.

- (a) (1) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise keep this information confidential, except as provided in this section.
  - (2) (A) On request, the registry shall disclose to the public the following:
    - (i) Whether an individual is or is not registered with the Statewide Registry.
    - (ii) Whether the Statewide Registry contains any information filed pursuant to subdivision (d) for a specific individual regarding his or her duties as a conservator, guardian, or trustee.
    - (iii) The educational background and professional experience of an individual registered with the Statewide Registry.
  - (B) Upon written request by a member of the public, the registry shall provide access to any information filed with the registry pursuant to subdivision (d) regarding a conservator, guardian, or trustee.
  - (3) Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator, guardian, or trustee or who are currently serving as a conservator, guardian, or trustee shall register with the Statewide Registry and shall reregister every three years thereafter. "Registration" means the filing of a declaration pursuant to subdivision (b).
- (b) All conservators, guardians, and trustees required to file information with the clerk of the court pursuant to Section 2340 or required to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to

one year in a county jail, or a fine of not more than two thousand dollars (\$2,000), or both that fine and imprisonment. The declaration shall contain the following information:

- (1) Full name.
  - (2) Professional name, if different from paragraph (1).
  - (3) Business address.
  - (4) Business telephone number or numbers.
  - (5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.
  - (6) The names of the conservator's current conservatees, the guardian's current wards, or the current trusts administered by the trustee.
  - (7) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.
  - (8) Whether he or she has ever been removed for cause or resigned as conservator, guardian, or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.
  - (9) In the case of a private professional conservator or a private professional guardian, compliance with the educational requirements established by the Judicial Council for private professional conservators and private professional guardians.
- (c) The Department of Justice may charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.
- (d) If a court makes a finding that a conservator, guardian, or trustee has not properly performed the duties of a conservator, guardian, or trustee, and that finding results in an order for a surcharge for other than nominal damages or for removal of the conservator, guardian, or trustee, the court clerk shall forward a copy of the court's finding and order to the Statewide Registry, which shall include this information in the file of that conservator, guardian, or trustee.



2851.

- (a) A court may not appoint a person as a conservator, guardian, or trustee unless that person, if required to register under Section 2850, is registered with the Statewide Registry.
- (b) Any person serving as a conservator or guardian prior to January 1, 2000, who does not register with the Statewide Registry by either January 1, 2001, or by the date of the next required review pursuant to Section 1850, whichever is sooner, shall be removed as a conservator or guardian by the court. A trustee required to register under Section 2850 who has not registered with the Statewide Registry on or before January 1, 2005, shall be removed as a trustee by the court, unless the court finds reasonable grounds not to do so.

If the court finds reasonable grounds exist for not removing the trustee for failing to register on or before January 1, 2005, the court shall order the trustee to register with the Statewide Registry within 90 days of the court's order and shall remove the trustee if the trustee has failed to register at the end of the 90-day period.

- (c) In appointing, continuing the appointment, or removing a person as conservator, guardian, or trustee, the court shall examine and consider the information contained in the Statewide Registry for that person. The information contained in the Statewide Registry shall be made available to the court for this purpose, but shall otherwise be kept confidential, except as provided by law.

2852.

- (a) Any person required to register under Section 2850 who serves as a conservator, guardian, or trustee without being registered with the Statewide Registry, who commits fraud in registering, who falsely asserts that he or she is registered, or who makes false claims or representations as to the nature of his or her file contained in the registry, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) for the first violation and a civil penalty in the amount of five hundred dollars (\$500) for each subsequent violation, to be assessed and collected in a civil action brought by the Department of Justice. All civil penalties collected shall be deposited in the General Fund. A person who lawfully delays registration pursuant to subdivision (b) of Section 2851 shall not be subject to a civil penalty for serving as a conservator, guardian, or trustee

without being registered until the time that subdivision (b) of Section 2851 authorizes his or her removal for failure to register.

- (b) Any court that removes a conservator, guardian, or trustee for cause, and any court that has accepted the resignation of a conservator, guardian, or trustee, shall notify the Statewide Registry of that removal or resignation and the reason therefor. The courts shall consider that information prior to the appointment of a person or entity pursuant to a subsequent petition for appointment as conservator, guardian, or trustee.

2853.

Notwithstanding any other provision of this chapter, in cases of urgency, where circumstances and justice warrant the appointment of a conservator, guardian, or trustee and time is limited, a court may appoint a person as conservator, guardian, or trustee without consulting the Statewide Registry or requiring registration prior to appointment.

2854.

- (a) This chapter does not apply to any public conservator or public guardian with regard to his or her official acts in that capacity.
- (b) This chapter does not apply to any conservator, guardian, or trustee when the person is related to the conservatee, ward, or trustor by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.
- (c) This chapter does not apply to any trustee who is serving for the benefit of not more than three people or not more than three families, or a combination of people or families that does not total more than three. The number of trust beneficiaries does not count for the purposes of calculating if a trustee falls within this exclusion. A trust excluded under subdivision (a) or (b) does not count for the purpose of calculating if a trustee falls within this exclusion. For the purposes of this subdivision, family means people who are related by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.

- (d) This chapter does not apply to any conservator or guardian who is not required to file information with the clerk of the court pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including an attorney licensed to practice law in the State of California who acts as trustee of only attorney client trust accounts, as defined in Section 6211 of the Business and Professions Code.
- (e) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.
- (f) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.
- (g) This chapter does not apply to a trustee who is any of the following:
  - (1) Trust companies, as defined in Section 83.
  - (2) FDIC insured institutions, their holding companies, subsidiaries or affiliates. For the purposes of this paragraph, "affiliate" means any entity that shares an ownership interest with or that is under the common control of, the FDIC insured institution.
  - (3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.

2855.

It is the intent of the Legislature that both:

- (a) Counties that provide for registration of conservators, guardians, or trustees continue to do so, and that the Statewide Registry not replace county registration.
- (b) Courts maintain oversight over the complaint process in order to safeguard the reputations of conservators, guardians, and trustees against unfounded complaints.
- (c) A conservator, guardian, or trustee who is reregistering with the Statewide Registry, after having met all the requirements stated in Section 2850, not be required to reverify previously claimed college or graduate degrees.